Supreme Court, U.S.
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No._____

In The

Supreme Court of the United States

Robbin Jackson,

Petitioner,

v.

Houston County Board of Education,

Respondent

On Petition For a Writ Of Certiorari To The United States Court Of Appeals For the Eleventh Circuit

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PETITION FOR A WRIT OF CERTIORARI

Mr. Robbin Jackson
1102 Lovely Lane
Perry, Georgia 31069
(912) 987-5152

October Term 1998

3188

QUESTION PRESENTED

Whether the district court and court of appeals violated my constitutional "Bill of Rights",seventh amendment to a jury trial in my civil case by issusing a summary judgment when all the facts were not in, and the facts that were presented from the defendant were based on mistrues (lies).

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PETITION FOR A WRIT OF CERTIORARI

Robbin Jackson respectfully petitions for a writ of certiorari to review the judgment of the United Court of Appeals for the Eleventh Circuit

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Opinions Below

The Court of Appeals is not published.

The District court is unreported.

Jurisdiction

Judgment issued from District Court on September 3, 1997

US. Court of Appeals for the Eleventh Circuit issued judgment on Jan. 11, 1999
Denied Rehearing on Feb. 22, 1999

Statement

It seems like a conspiracy here in the 'good ole boys' State of Georgia between the United States District Court of Middle Georgia in Macon, and The United States Court of Appeals in Atlanta.

It seems like civil rights laws are a thing of the past in the 'good ole South.'

There is evident to show that the United States District Court was in error by granting summary judgment to the Appellee. First of all, the Appellant has finish his master's degree in guidance and counseling, and have talked to the new Superintendent, Mr. Charles A. Holloway about a job in the Houston County school system. Mr. Tony Hinnant, the former superintendent, cited "the reason for the Appellant dismissal was for 'lack of work'," which was a lie.

As of today, May 22, 1999, the Appellee has not offered the Appellant any job; eventhough, they continuously advertise that they are in need of workers.

The filing of two motions by the Board to get the district court to issue a summary judgment should have told the Court of Appeals in Atlanta that all information had not been submitted to issue any summary judgment.

The affidavit attesting that Jackson would not be qualified for a middle- school teaching position unless he obtained a provisional accelerated teaching certificate that was submitted by the Appellee, also was a lie. Now that the Appellant has a master's degree for grades k-12, it is clear to see and understand that the Appellee had no intention of hiring the Appellant for a full time teaching position.

The Appellant asked the district court on three occasions, and also asked the court of appeal to have the Appellee to turn over important documents that I need to win this case. As of today, I have not receive any of the documents that I requested.

The district court was in error by not forcing the Board to turn over those documents.

The interview scores that the Appellant received from the Appellee's committees were bias as explained to the lower courts.

The district court summary judgment was an error for not allowing the Board to fully comply with the Appellant request for those documents.

It is the Appellant hopes that the Supreme court would overrule both lower courts and grant awards to the Appellant.

The documents requested by the Appellant were discoverable, relevant, and necessary to overcome summary judgment by the district court.

In another case involving another black person in the Houston County school system, the Board tried to destroy this person's reputation by saying that she was incompentent, had questionable teaching skills, poor command of the English language and an explosive temper. Those allegations were proven wrong by the Georgia State Board of Education.

This goes to show that the Houston County Board would use anything to get rid of teachers that they do not like; suchas, the Appellant.

The Board hired the new Superintendent's wife to the Feagin Mill Middle where they fired the teacher from whom they said was incompetent.

The reason why the Appellee do not want to produce the documents the Appellant is requesting because it would show the Appellee is not truthful in their pay to blacks and whites; especially, the high school coaches.

It is my prayers that the Supreme Court do not fall in the same trap the district court and the court of appeals fell into by believing that the Appellee relies on strong interview scores and

resumes from other applicants in their decision to hire. It is a "good ole boy" system inwhich they hire. If you don't go with the Board's wrong, then you won't get hired.

These are genuine issues that a jury should hear and not rest upon a judge suchas Judge Duross Fitzpatrick, who has made other premature summary judgments while serving on the district court.

An abuse of discretion would have been shown if the Board substantially complied with the Appellant's discovery requests, and the documents the Appellee did not produce would have enabled the Appellant to demonstrate a genuine issue of material facts.

The Appellant has establish his claim of discrimination from the facts already presented. However, there are more witnesses that the Appellant wants to present. The district court, and now the appeals court, want to take away the Appellant's constitutional "Bill of Rights", which states in the seventh amendment: "Right to jury trial in civil cases." The Appellant wants a jury to decide the facts in this case.

The Board uses the same old lies; suchas, the Appellant's poor English skills, low interview scores, and classroom-management problems as the reason for not hiring the Appellant. As the court can see, they used those same old lies to deny Ms. Elizabeth McCrary (the lady mentioned earlier) her job.

There are plenty genuine issues in this case, and please do not be a part of the Board's crimes and allow them to continue discriminating against minorities; especially, black males.

This is a case where the Appellee is retaliating against the Appellant for filing the law suit against them.

The Board's reason of non-discriminatory reasons for not hiring the Appellant is not true. The constrained budget deficit was true, but only because of the mismanagement of funds by the Board. If the Appellant had not filed this suit, he would have still been employed with the Houston County school system.

You can always need new schools; however, the Board has misused tax payers money by opening and closing schools.

The Appellant showed that there were openings in the Houston County School system in his field. The Board also hires people out of their field. However, the Board had no intention of hiring the Appellant as a full time teacher in the twenty plus years he was working as a substitute.

Just because the Houston County Board of Education hired a black man at the Perry Middle School for the science teaching position, after the lawsuit was filed, does not mean the system does not discriminate against black males; suchas, the Appellant.

Only after the lawsuit was filed, that the Board and Perry Middle School, where I was employed, questioned my classroom management. I was receiving good reports for my job performance.

After years of going to school to become a full-time teacher and work in the school system of Houston County and being a taxpayer, it is a bad feeling to be discriminated against by the Houston County Board of Education.

Instead of looking for black male role models for the school system, the Board is doing everything to keep the black man out of the system. So please rule against the lower courts.

This 22th day of May, 1999

Robbin Jackson,
Pro se

1102 Lovely Lane
Perry, Georgia 31069
(912) 987-5152

Sworn before me this 21 day of May, 1999.

Notary Public, Houston County, Georgia
My Commission Expires April 28 2002

(Do Not Publish)

IN THE UNITED STATES
COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT

No. 97-9104
Non-Argument Calendar

D.C. Docket No.
5:96-CV-162-1(DF)

Robbin Jackson,
Plaintiff-Appellant,

versus

Houston County Board of
Education, a school system in the
State of Georgia,
Defendant-Appellee.

Appeal from the United States
District Court for the Middle District
of Georgia

(January 11, 1999)
Before TJOFLAT and
EDMONDSON, Circuit Judges and
CLARK, Senior Circuit Judge.
PER CURIAM:

Appendix A

Plaintiff Robbin Jackson, pro se, appeals the grant of summary judgment for defendant Houston County Board of Education ("the Board") in his employment-discrimination action filed under 42 U.S.C. 2000e-2 and 42 U.S.C. 1981. Jackson, a black man, alleged that, due to race and sex discrimination, the Board discharged him as a substitute teacher and did not hire him as a full-time teacher. Jackson had been a full-time substitute teacher at Perry Middle School for three years, and had intermittently substituted in the Houston County school system for 20 years. He asserted that the Board gives whites and women preferential pay, job responsibilities, and promotions. He sought back pay, punitive damages, and equitable relief. The Board answered, denying the allegations of discrimination.

After a period of discovery, the Board moved for summary judgment. It submitted Jackson's deposition and several affidavits. Jackson filed two unsworn reponses. The district court found that Jackson failed to create a genuine issue of material fact regarding the following claims: (1) the Board pays white and female teachers more than black and male teachers; (2) he was terminated as a permanent substitute teacher because of his sex and/or race; (3) he was not hired to fill a special-education teaching position because of his race and/or sex; and (4) he was not hired for a computer-keyboarding position because of his sex and/or race. The court therefore granted the Board partial summary judgment.

The Board filed a second motion for summary judgment. It submitted an affidavit establishing that when Jackson applied for a computer teaching position, he had the lowest score. Finally, Jackson was interviewed for a science teaching position, but the Board hired a black man with the highest interview score and the strongest science background. The Board also submitted an affidavit attesting that Jackson would not be qualified for a middle-school teaching position unless he obtained a provisional accelerated teaching certificate.

Jackson filed an unsworn response. In addition, Jackson filed a third request for production of documents and moved to hold the Board in contempt for not complying with his discovery requests. Earlier, the district court issued a scheduling order requiring the completion of discovery by a specific deadline. The Board answered Jackson's initial request for production of documents within this time frame, but it objected to some of Jackson's requests as being overbroad and burdensome. The district court never ruled upon the objections. Jackson's third request for production of documents, filed eight months after the discovery deadline passed, reiterated his original request. The district court did not acknowledge the request or construe it as a motion to compel discovery. The court denied Jackson's motion for contempt without stating its reasons.

The district court also granted summary judgment for the Board on Jackson's remaining claims. The court found it undisputed that Jackson's interview scores for the positions of computer, journalism, and science teacher were considerably lower than those of other applicants, and Jackson offered nothing to show that the Board's reasons for not hiring him were a pretext for discrimination.

On appeal, Jackson argues that (1) the district court erred by granting summary judgment to the Board while his discovery requests were still outstanding; (2) genuine issues of material fact precluded summary judgment because (a) the Board told him that no openings in his field of business education existed, but hired a business education teacher without first offering him the job; (b) he did not necessarily need to obtain a provisional accelerated teaching certificate to teach middle school; (c) one interviewer wrote "hire" in reference to another applicant before completing all interviews; (d) his low interview scores were a result of "biased thinking" from the interviewers.

This court reviews whether the district court prematurely granted summary judgment for abuse of discretion.[1] Our review of a district court's grant of summary judgment is plenary, viewing all facts in light most favorable to the non-movant.[2]

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[1] See Dean v. Barber, 951 F.2d 1210, 1213 (11th Cir. 1992).

[2] Harris v. Shelby County Board of Education, 99 F.3d 1078, 1082 (11th Cir. 1996).

We have reviewed Jackson's complaint, the Board's motions for summary judgment, Jackson's responses, the district court's orders, and other relevant portions of the record. Having considered those, along with the briefs of the parties, we find no reversible error.

Completion of discovery before summary judgment

Jackson argues that the district court erred by granting summary judgment to the Board "without allowing the Plaintiff to receive all the documents needed to win the case." He complains that the Board never fully complied with his requests for documents, and that the district court never ordered the Board to so comply. The Board does not respond to this argument.

"Generally, summary judgment is inappropriate when the party opposing the motion has been unable to obtain responses to his discovery requests."[3] Under Fed.R.Civ.P.56(f), the non-moving party may request a continuance of the motion for summary judgment "to permit affidavits to be obtained or depositions to be taken or discovery to be had." A pro se litigant need not invoke Rule 56(f) literally, so long as he notifies the district court that discovery is outstanding and seeks a delay of summary judgment ruling until the defendants comply with his discovery requests, as Jackson did here.[4] This court reviews whether the district court prematurely

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[3] Snook v. Trust Co. of Georgia Bank of Savannah, 859 F.2d 865, 870 (11th Cir. 1988).

[4] See Dean, 951 F.2d at 1214 n.3.

granted summary judgment for abuse of discretion.[5]

Here, the Board did not respond to four of Jackson's requests for production of documents:

> 1. Any and all payroll records and any other documents which reflect the pay history of your employees, their assignment or work area history, their race, sex, and proficiency history, in your Georgia school system for the years 1975 to present. ("History" in this context means actual pay and any information concerning any changes made, such as salary increases or decreases and the dates these events occurred with respect to each employee.)
>
> 2. Each employment discrimination complaint, no matter where said complaint was made (i.e. internally to you, externally to the EEOC or U.S. Depart. of Labor) filed regarding each and every department operated by you, since 1975.
>
> 3. Each and every employment discrimination charge made against you to the EEOC or filed in a State or Federal court, regarding each and every department or school operated by you, since 1975.

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[5] See id. at 1213.

> 4. All personnel files of all employees working in the job categories Plaintiff worked in and of those who were promoted to teaching positions over plaintiff.[6]

This case is analogous to cases in which the district court grants summary judgment without ruling upon the plaintiff's outstanding motion to compel discovery.[7] By ignoring the non-moving party's complaints of inadequate discovery, a district court may improperly deprive the litigant of his right to use discovery to obtain facts necessary to oppose summary judgment.[8] This court will reverse the grant of summary judgment if the plaintiff's outstanding request sought evidence that was discoverable, relevant and necessary to overcome summary judgment.[9] However, where the outstanding discovery could not create material factual disputes, summary judgment will stand despite the district court's

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[6] R1-7 at 15 Request No. 1; 16 Request No.2; 16-17 Request No. 3; and 18 Request No. 9.

[7] See, e.g., Dean, 951 F.2d at 1213-1214; Fernandez v. Bankers National. Life Insurance Co., 906 F. 2d 559, 570-571 (11th Cir. 1990); Snook, 859 F.2d at 871.

[8] See Fernandez, 906 F. 2d at 571 Snook, 859 F.2d at 871.

[9] See Fernandez, 906 F.2d at 570-71; Snook, 859 F.2d at 871.

failure to rule upon the plaintiff's discovery requests.[10]

Jackson's request for the race, sex, and payroll records of each Board employee from 1975 to the present seems to have been designed to support his claim that the Board pays white and female employees more than those who are black and male. It is not clear that this sweeping request was discoverable, however, as it appears to be "unreasonably cumulative or duplicative, or...obtainable from some other source that is more convenient, less burdensome, or less expensive." The Board did provide Jackson with demographic breakdowns of its employees by race and sex, and copies of the applicable, pre-set state teacher pay schedules and county supplements. In light of the discovery that Jackson recieved indicating the race, sex, and pay levels of Board employees, it does not appear that the district court "circumvented the policy underlying discovery" by failing to compel the Board to comply with this request.[11]

Regarding Jackson's request for documentation of previous employment-discrimination charges, although the Board did not produce any files, it did give Jackson the

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[10] See National Union Fire Insurance Co. of Pittsburgh v. Sahlen, 999 F.2d 1532, 1537 (11th Cir. 1993).

[11] Compare with Snook, 859 F. 2d at 871 (outstanding discovery requests left record inadequate for grant of summary judgment).

names and case numbers of two previous employment-discrimination actions filed in the Middle District of Georgia. Because Jackson could have explored the cases if he so desired, he does not appear to have been deprived of "the opportunity to discover information relevant to the summary judgment motion" on this request.[12]

Finally, Jackson's request for personnel files of employees who were promoted to teaching positions over him appears to have been designed to support his claim that he was not hired as a full-time teacher due to discrimination. The relevance and discoverability of such documents is manifest because the Board relied on strong interview scores and resumes from other applicants--and the comparative weakness of Jackson's scores--to support its motion for summary judgment. Indeed, when Jackson sought to have the Board held in contempt, one of his chief complaints was that although the Board produced these documents in support of summary judgment, it should have produced them much earlier in compliance with his discovery request. Nonetheless, as discussed below, even if the Board had produced the documents earlier, Jackson would not have been able to glean a genuine issue of material fact from them, as they overwhelmingly justified the Board's decision not to hire him.

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[12] Compare with Dean, 951 F.2d at 1214 (defendant's incomplete answers to discovery requests deprived plaintiff of opportunity to discover relevant evidence).

Because the Board substantially complied with Jackson's discovery requests, and documents a genuine issue of material fact, Jackson is unable to show an abuse of discretion.[13]

Propriety of summary judgment

Jackson argues that several genuine issues of material fact precluded summary judgment: (1) the Board told him that no openings in his field of business education existed, but hired a business education teacher without first offering him the job; (2) he did not necessarily need to obtain a provisional accelerated teaching certificate to teach middle school; (3) one interviewer wrote "hire" in reference to another applicant before completing all interviews; and (4) his low interview scores were a result of biased thinking" from the interviewers. The Board responds that Jackson failed to establish his claim of discrimination, and that it had legitimate, non-discriminatory reasons for terminating him as a substitute and not hiring him as a full-time teacher. The Board specifically contends that Jackson's poor English skills, low interview scores, and classroom-management problems prevented his success in a competitive hiring process.

Summary judgment is appropriate when there are no genuine issues of material fact and the

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[13] See Florida Power & Light v. Allis Chalmers Corp, 893 F.2d 1313, 1316 (11th Cir. 1990) (upholding district court's decision not to allow additional time for deiscovery before summary judgment because period for discovery had expired and defendants already had provided relevant discovery materials).

moving party is entitled to judgment as a matter of law.[14] Althouth pro se pleadings are entitled to liberal interpretation, a pro se litigant must meet the essential burden of establishing a genuine issue of material fact by submitting sworn materials.[15]

Under both Title VII and 42 U.S.C. 1981, circumstantial evidence of employment discrimation is analyzed under the burden-shifting test of McDonnell Douglas Corp v. Green.[16] The Plaintiff must (1) establish a prima facie case of discrimination; (2) the burden then shifts to the defendant "to articulate some legitimate, nondiscriminatory reason for the employee's rejection;" and (3) the plaintiff must then have an opportunity to prove the reasons offered by the defendant were a pretext for discrimination.[17] A *prima facie* case of discrimination, coupled with evidence sufficient

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14 See Fed.R.Civ.P. 56(c).

15 See Brown v. Crawford, 906 f.2d 667, 670 (11th Cir. 1990), cert. denied, 500 U.S. 933, 111 S.Ct. 2056, 114 L.ED. 2d 461 (1991); Gordon v.Watson, 622 F.2d 120, 123 (5th Cir. 1980).

16 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). See McWilliams v. Escambia County School Board., 658 F.2d 326, 331(5th Cir. Unit B 1981).

17 See Mcdonnell Douglas Corp., 411 U.S. at 802-04, 93 S.Ct. at 1824-25.

to permit a reasonable fact finder to disbelieve an employer's proffered reasons for the challenged action, precludes summary judgment for the defendant.[18]

The district court appears to have implicitly assumed that Jackson established a prima facie case of discrimination. Moreover, the Board does not argue against it, focusing instead on its legitimate, non-discriminatory reasons for not hiring him and his inability to demonstrate pretext. Accordingly, this court may assume that Jackson met the first part of the McDonnell Douglas test.[19]

As for the second prong, it was undisputed that the Board eliminated Jackson's job as a substitute due to a $3,224,054 budget deficit. An employer's constrained budget can serve as a legitimate, non-discriminatory reason for its employment decisions.[20] It was also undisputed that Jackson achieved weak interview scores compared to other applicants for the teaching positions. An employer's belief that another

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[18] See Combs v. Plantation Patterns, 106 F.3d 1519, 1534 (11th Cir. 1997), cert. denied, __U.S.__, 118 S. lCt. 685, 139 L. Ed. 2d 632 (1998).

[19] See, e.g. Mayfield v. Patterson Pump Co., 101 F.3d 1371, 1375 (11th Cir. 1996).

[20] See Miranda v. B & B Cash Grocery Store, Inc., 975 F. 2d 1518, 1529 (11th Cir. 1992) (budgetary restrictions appeared to be legitimate reason for plaintiff's low wage, subject to a showing of pretext).

applicant is "the best person for the job" may constitute a legitimate, non-discriminatory justification for its decision not to hire the plaintiff.[21]

Third, regarding pretext, Jackson offered nothing to allow a jury to find "that a discriminatory reason more likely motivated the employer or . . . that the employer's proffered emplanation is unworthy of credence."[22] Although he claims that the Board's hiring committees are biased, he never submitted any sworn materials to substantiate this allegation. Conclusory, unsworn allegations of discrimination are insufficient to create a genuine issue of material fact, particularly in light of the employer's evidence of legitimate, non-discriminatory reasons.[23]

Finally, despite Jackson's insistence that several genuine issues remained for trial, nothing he points to was sufficient to preclude summary judgment. His claim that the Board told him there were no openings in his field of business education, but it hired a business education teacher without first offering him the job does not suffice because the position was filled while Jackson still worked as a permanent substitute.

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[21] See Olafson v. Dade County School Board, 651 F. 2d 393, 395-96 (5th Cir. Unit B 1981).

[22] Hairson v. gainesville Sun Pub. Co., 9 F.3d 913, 920 (11th Cir. 1993), reh'g denied, 16 F.3d 1233 (1994).

[23] See Grigsby v. Reynolds Metals Co., 821 F.2d 590, 597 (11th Cir. 1987) (conclusory allegations of discrimination); Gordon v. Watson, 622 F.2d 120, 123 (5th Cir. 1980) (unsworn materials).

Thus, the Board's statement of no openings in Jackson's field after his substitute position was eliminated remains undisputed.

Jackson also failed to rebut the Board's evidence that he would need a provisional accelerated teaching certificate to teach middle school. Although he claimed the provisional certificate was unnecessary because he has 71 hours toward his master's degree, he adduced nothing to demonstrate that progress toward a master's degree alleviates teaching-certification requirements. Finally, that one interviewer wrote "hire" in reference to another applicant before conducting Jackson's interview for the science teaching position, did not create a genuine issue of race or sex discrimination. The comment only represented one interviewer's impressions, and, although the applicant was ultimately hired, he was, like Jackson, a black man.[24]

We conclude that the district court did not abuse its discretion by granting summary judgment while Jackson still had outstanding discovery requests. We further conclude that there was no genuine issue of material fact, and the district court did not err by granting the Board Summary judgment.

AFFIRMED. "s/Jenifer Alexander"
Deputy Clerk-Atlanta,GA

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[24] Howard v. Roadway Exp., Inc., 726 F.2d 1529, 1534-35 (11th Cir. 1984) (fact that employer hired a black applicant may rule out inference of discrimination against black plantiff).

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA-MACON DIVISION

Robbin Jackson,
Plaintiff,

v. C.A. No. 5:96-CV-162-1(DF)

Houston County Board of Education,
Defendant.

Civil Order File
Volume 69, Page 6879

JUDGMENT

The Court by Order dated September 2, 1997 and filed September 3, 1997, having granted Defendant's Motion for Summary Judgment,

Judgment is hereby entered in favor of Defendant Houston County Board of Education and against Plaintiff Robbin Jackson.

This 3rd day of September, 1997.

Gregory J. Lenard, Clerk
"s/Shari Walsh," U.S. Deputy Clerk

Appendix B

App. 16

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

Robbin Jackson,
Plaintiff,

vs. 5:96-CV-162-1(DF)

Houston Board of Education
Defendant

Civil Order File
Volume 69
Page 6879

Order

The above styled case is a civil rights action brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq. and 42 U.S.C. 1981. Plaintiff claims that Defendant has on numerous occasions discriminated against him on the basis of his race, which is black, and his sex, which is male. On June 25, 1997, the Court entered an order that granted Defendant's motion for summary judgment for the claims of Plaintiff alleging that (1) the county pays its white and female teachers more than it does its black and male teachers; (2) Plaintiff was terminated from his position as a permanent substitute teacher because of his race and/or sex; (3) he was not hired to fill a special education teacher vacancy at Perry Middle School because of his race and/or sex; and (4) he was not hired to fill a computer keyboarding position at Bonair Middle School because of his race and/or sex. However, the Court ruled that Defendant had not met its initial burden of establishing that no genuine issue of material fact exists regarding Plaintiff's claims that he was illegally discriminated against

when he was not offered the following positions: exploratory computer position, speech journalism exploratory teacher, and science teacher. Defendant has filed a second motion for summary judgment, and additional material in support of the motion, which is now ripe for consideration by this Court.

Standard for Summary Judgment

Summary Judgment requires the movant to establish the absence of genuine issues of material fact, such that the movant is entitled to judgment as a matter of law. Fed.R.Civ.Proc. 56(c); Lordman Enterprises, Inc. v. Equicor, Inc., 32 F. 3d 1529, 1532 (11th Cir. 1994). After the movant meets this burden, "the non-moving party must make a sufficient showing to establish the existence of each essential element to that party's case, and on which that party will bear the burden of proof at trial." Howard v. B.P. Oil Co., Inc. 32 F.3d 520, 524(11th Cir. 1994) citing Celotex Corp. v. Catrett, 477 U.S.317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The non-moving party to a summary judgment need make this showing only after the moving party has satisfied its burden. Clark v. Coats & Clark, Inc. 929 F. 2d 604, 608 (11th Cir.1991).

The Court should consider the pleadings, depositions, and affidavits in the case before reaching its decision, Fed.R.Civ.Proc.56(c), and all reasonable inferences will be made in favor of the non-movant. Griesel v. Hamlin, 963 F.2d 338, 341 (11th Cir. 1992). Additionally, a "court need not permit a case to go to a jury...when the inferences that are drawn from the evidence, and upon which the non-movant relies, are 'implausible'." Mize v. Jefferson City

Bd. Of Educ., 93 F.3d 739, 743 (11th Cir. 1996). Furthermore, when the evidence is only circumstantial, summary judgment may be granted when a court "concludes that no reasonable jury may infer from the assumed facts the conclusions upon which the non-movant's claim rests." Id.

Facts

The Court will only outline the facts relevant to the motion now pending before the Court. Additional facts may be found in this Court's Order of June 25, 1997.

In May, 1994, Plaintiff interviewed for a computer exploratory teaching position. Three applicants were interviewed; two of the applicants were black and one was white. Robbin Jackson had the lowest interview score of the three applicants. A black female, Brenda Lee, was hired for the position.

In August, 1994, Robbin Jackson was interviewed for a journalism exploratory teaching position. There were six people interviewed for the position. The interview committee, which included a black woman, gave Robbin Jackson the lowest score of all applicants.

In November, 1996, Plaintiff interviewed for a science position. Mr. Cedric Rumph was hired to fill the science teaching position. Mr. Rumph is a black male who had the strongest science background and the highest interview score of all the applicants. Plaintiff, in contrast, has a degree in business education and a certificate qualifying him to teach business education at the high school level for computers, typing, and data processing. Of the eleven applicants for the science position, Plaintiff received the second lowest interview score.

During the hiring process for each of the three positions described above, Bobby Pennington, Principal of Perry Middle School, has stated that in addition to the interview scores, he considered Plaintiff's poor performance in his position as a permanent substitute teacher in Houston County.

Conclusions of Law

A Plaintiff may prove a claim of race or sex discrimination through circumstantial evidence through the burden-shifting analysis set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 207 (1981), and Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981).[1]
Under the McDonnell Douglas and Durdine framework:

> [A Plaintiff must] create an inference of discrimination by establishing a prima facie case. If he does so, the defendant must 'articulate some legitimate, non-discriminatory reason for [its action].' The Plaintiff may then attempt to show that these reasons are pretextual or may present other evidence to show that discriminatory intent was more likely the cause of the employer's actions.

Nix v. WLCY Radio/Rayhall Communications, 738 F.2d 1181, 1184 (11th Cir. 1894) (citations omitted).

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[1] **Because Title VII and Section 1981 employment discrimination claims are governed by the same evidentiary burden, the analysis of these two claims is combined.**

Plaintiff has failed to create an inference of discrimination with regard to the School Board's refusal to hire him for any of the three positions at issue here. One of the three positions was filled by a black woman, and another was filled by a black man. For each position, Defendant has demonstrated that Plaintiff had interview scores that were considerably lower than those of the person who was eventually hired into the position. Additionally, Defendant has presented evidence that Plaintiff's record as a substitute teacher was marred by incidents that reflect poorly on Plaintiff's ability; this affected the hiring decision. Thus, Defendant has shown that its decisions were not influenced by Plaintiff's race or sex, and Plaintiff has offered no evidence that suggests that the reasons proffered are pretext. Therefore, Defendant is entitled to summary judgment for each of the three claims addressed in its Second Motion for Summary Judgment.

Accordingly, Defendant's motion for summary judgment is hereby **Granted.**

SO ORDERED, this 2 day of September, 1997.

"s/Duross Fitzpatrick"
Duross Fitzpatrick, Judge
United States District Court

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 97-9104

Robbin Jackson,
Plaintiff-Appellant,
verus

Houston County Board Of Education,
a school system in the State of Georgia,
Defendant-Appellee

On Appeal from the United States District Court for the Middle District of Georgia

Before TJOFLAT and EDMONDSON, Circuit Judges and Clark, Senior Circuit Judge.

Per Curiam:

The Petition(s) for rehearing filed by appellant, Robbin Jackson, is denied.

Entered For the Court:

"s/Clark"
United States Circuit Judge

U. S. Court of Appeals
Eleventh Circuit
February 22, 1999
Thomas K. Kahn,
Clerk

Appendix c

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mr. Robbin Jackson,
Pro se
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Perry, Georgia 31069
(912) 987-5152